

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

CHI/00HN/OCE/2008/0006

Decision of the Leasehold Valuation Tribunal on application under Sections 48 and 60 of the
Leasehold Reform, Housing and Urban Development Act 1993

Applicant:	Floris Court Freehold Limited
Respondent:	Heritage Land PLC
Re:	Flats 1-12 Floris Court, 15 Knole Road, Boscombe, Bournemouth
Date of Application	14 th January 2008
Date of Inspection	27 th August 2008
Date of Consideration	27 th August 2008

Members of the Leasehold Valuation Tribunal

M J Greenleaves
J S McAllister FRICS

Lawyer Chairman
Valuer Member

Date of Tribunal's Decision: 5th September 2008

Decision

1. The costs payable by the Applicant to the Respondent under Section 33 of the Leasehold Reform, Housing and Urban Development Act 1993 are £1,097.46 legal fees and disbursements and £1,586.25 Valuer's fees and disbursements (all including VAT)

Reasons

Introduction

2. This was an application made by Floris Court Freehold Limited (the Applicant) to the Tribunal under Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act) for the determination of issues arising from its claim for enfranchisement relating to the freehold of Floris Court, 15 Knole Road, Boscombe, Bournemouth ("the premises").
3. Various terms of acquisition had been in dispute but all had been settled by the parties prior to the hearing save for the costs of the Respondent payable by the Applicant under Section 33 of the Act.
4. The Tribunal's consideration was therefore limited to determination of the costs payable by the Applicant to the Respondent under Section 33 of the Act.

Inspection.

5. The Valuer member of the Tribunal made a "drive by" inspection of the property prior to the Tribunal's consideration of the parties written submissions. The property is a detached modern block of flats of traditional construction with a rank of garages and mature garden and grounds.

Consideration.

6. The Tribunal considered all the case papers relating to the costs issue and the submissions made on that aspect.
7. From the Respondent, the Tribunal received a letter dated 8th July 2008 from their Solicitors: Maxwell Winward, together with a Statement of Costs. This Statement showed:
 - a. Legal fees and disbursements: a breakdown of hourly rates applied, the hours spent by individual fee earners and their status; the amount and description of disbursements;
 - b. Valuer's fees and disbursements: a breakdown of hourly rates applied, the hours spent by the individual; the amount and description of disbursements; the actual fee charged of £4,500 + VAT and disbursements.
8. From the Applicant, the Tribunal received
 - a. a letter dated 8th July 2008 from their Solicitors Insley & Partners,
 - b. detailed Points of Dispute dated 8th July 2008 in respect of the Respondent's submissions,
 - c. a letter dated 9th July 2008 from their Surveyors and Valuers House & Son as to their hourly rate in such a matter when acting for a freeholder in cases since 1st January 2007 and expressing the opinion that in this case a fee in excess of £1,250 plus VAT would be unreasonable.
 - d. A copy of the Leasehold Valuation Tribunal's determination and reasons in the case of Ms F Mellery-Pratt and Wychwood Freehold Limited (CHI/00HN/OC9/2008/0001) dated 4th April 2008.
9. The Tribunal did not receive any response from the Respondent in reply to the documents submitted by the Applicant

10. While the Tribunal is not bound by decisions of other Tribunals in other cases, it did concur with the analysis of the law of the Tribunal in the case referred to at 8d above and applied it to its determination in this case.

11. Legal costs

- a. The Respondent indicates that three levels of fee-earner were involved on the case: a partner at £315 per hour for 2.5 hours; an assistant solicitor at £175 per hour for 3.5 hours and a legal executive "specialising in enfranchisement work" at £185 per hour for 2 hours. They had merged the hourly rates of the assistant solicitor and legal executive to £180 per hour in their calculation.
- b. The Applicant says that the hourly rates charged and the time spent is excessive, suggesting alternative rates; that City Solicitors should not have been retained; that the specialising legal executive should have carried out all the material work; that some work carried out by the partner is limited by the Act and the time taken excessive. The Respondent did not reply to these contentions.

12. The Tribunal considered that there being no qualification or additional explanation of the specialism of the legal executive, there seemed to be no reason why all of the legal work for the Respondent should not have been done by that legal executive. It considered the rate of £185 per hour for that fee-earner was reasonable for a City firm and that it was not unreasonable to employ that firm; on the basis that that fee-earner carried out all the work for that firm, doing so would satisfy the test of Section 33(2) of the Act.

13. As to the time spent by Maxwell Winward, the Tribunal considered:

- a. The partner's time would all come within Section 33(1)(a) of the Act, but that the time spent would not be expected to take more than 1.5 hours
- b. Deduction of title and consideration of documents and information. The description indicates consideration of 12 leases. Those leases appear to the Tribunal to be in substantively the same form as each other and it would be unreasonable to allow time for considering each lease individually as seems to be implied. Further if the work had been carried out by the legal executive, it could have been done more efficiently and therefore more quickly. The Tribunal considered the time to be allowed within Section 33 for this work should be limited to 1.5 hours.
- c. Transfer Deed and related work. The Tribunal accepted the time spent on this aspect by a specialised fee-earner was reasonable

14. The Tribunal accepted the cost of disbursements to be reasonable

15. Accordingly the Tribunal calculated (using the legal executive's rate) the legal costs and disbursements payable by the Applicant to be as follows:

- a. Partner's time 1.5
- b. Deduction of title etc 1.5
- c. Transfer deed etc 2.0
- d. Total 5 hours @ £185 per hour = £925 + VAT = £1,086.88. Add disbursements of £9 plus VAT = £10.58. Overall charges allowed = £1,097.46

16. Valuers fees and disbursements.

- a. The Valuers – Savills – had levied a fixed fee of £4,500 plus VAT and disbursements – a total of £5,501.46
- b. However, the Respondent calculated their charges on the basis of an hourly rate of £275 for Mr Stimson of Savills in Berkeley Square, London. Using this rate and time spent Savill's fee was calculated to be £7,562.50. However, for

some reason not explained to the Tribunal, they had reduced their fee to the sum referred to at 16a above.

- c. The time spent was 6.5 hours travel, inspection and measuring; a further 21 hours for reading the lease, research, queries, preparing calculations and producing a report
 - d. Disbursements for travel, photography, plans and binding were £182.09 plus VAT.
17. The Applicant refers to the Valuer coming from London, that the hourly rate is excessive, including in relation to the Section 33 tests, and refers to their own Valuer's charge rates and House & Son's letter. They submit that negotiation, research and travel should be disallowed. They also make the point that much time must have been spent on issues concerning the roof space, a point they say was abandoned by the Respondent.
18. The Tribunal, taking into account the Applicant's submissions, first found the following:
- a. It had no assistance from the Respondent on the submissions made by the Applicant.
 - b. It would not disallow expense incurred concerning the roof space simply because it did not pursue that aspect.
 - c. That there was no good reason why the Respondent could not have instructed a local Valuer experienced in this type of work – a Valuer who would also have the benefit of local knowledge of relevant values. The consequence resulting from employing Savills in London was the incurring of unreasonable costs in this particular case.
 - d. A local Valuer might be expected to charge at a rate of not more than £150 per hour plus VAT
 - e. A local Valuer would also all but eliminate travel time
 - f. That the overall time reasonably expected to be taken for travel, inspection and measuring should not exceed 1.5 hours
 - g. That lease reading, research, queries, calculations and report should not take more than about 6 hours
19. Accordingly the Tribunal calculated the Valuer's fees payable under the terms of Section 33 to be in the region of £1,125 $((1.5 + 6) \times 150)$ plus VAT
20. However, the Tribunal considered this first calculation in the light of the letter from House & Son. Bearing that in mind, the Tribunal determined the amount of Valuer's fees to be payable by the Applicant as £1,250 plus VAT = £1,468.75.
21. In respect of disbursements, there is no calculation of the mileage rate used. The Tribunal discounted a travel charge completely but allowed a balance of £100 plus VAT = £117.50
22. The Tribunal accordingly determined the overall Valuer's costs payable by the Applicant to be £1,586.25.
23. The Tribunal made its decisions accordingly.



M J Greenleaves (Chairman)

A member of the Southern
Leasehold Valuation Tribunal
appointed by the Lord Chancellor